

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Robert E. ADAMS 435-54-4670

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2525

Robert E. ADAMS

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.701.

By an order dated 20 March 1990, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's Merchant Mariner's Document upon finding proved the charge and specification of misconduct for possession of a controlled substance, marijuana.

The specification found proved alleges that Appellant, while serving under the authority of his above-captioned document as seaman on board the M/V GOLDEN ENDEAVOR, a merchant vessel of the United States, did, on 26 October 1988, wrongfully possess a controlled substance Appellant submitted an answer of deny to the charge and specification.

The Investigating Officer presented the sworn testimony of one witness and two stipulations of expected testimony. In addition, two exhibits were admitted into evidence on behalf of the Investigating Officer. Appellant presented the sworn testimony on one witness and testified under oath in his own defense. In addition, one exhibit was admitted into evidence on behalf of Appellant. Upon finding proved the charge and specification of misconduct, the Administrative Law Judge revoked Appellant's document.

The complete Decision and Order was served on Appellant on 22 March 1990. Appellant filed a notice of appeal on 20 April 1990 and received a copy of the transcript on 26 December 1990 and filed a supporting brief on 26 February 1991. Accordingly, this matter is properly before the Commandant for disposition.

FINDINGS OF FACT

At all times relevant, Appellant was serving as a seaman aboard the M/V GOLDEN ENDEAVOR, a merchant vessel of the United States. Appellant, at all times relevant, was the holder of the above-captioned merchant mariner's document issued by the U.S. Coast Guard.

On 26 October 1988, the vessel was moored in the port of Chittagong, Bangladesh. While in the vicinity of the crewmembers' staterooms, the Master detected a strong aroma of incense and summoned a steward and the boatswain to search crewmember staterooms. Upon entering Appellant's stateroom with a master key, the Master saw Appellant putting two packages in his pocket. One of the packages contained flaky, leafy material resembling marijuana. At the Master's request, Appellant relinquished the package which was placed in the Master's desk and one hour later put in the Master's safe. The drawer was unlocked but the Master's stateroom and the safe were locked. Besides the Master, only the Chief Mate and Chief engineer had keys to the Master's stateroom.

On 28 December 1988, Appellant was discharged from the vessel at Bangladesh.

The package remained locked in the Master's safe until tested by Customs Agents in Norfolk, Virginia. The field test was positive for

marijuana.

Appearance: Ms. Magdalen C. Blessey, Attorney at Law, Gardner, Robein & Urann, 2540 Severn Avenue, Suite 400, Metairie, Louisiana 70002.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant asserts the following bases of appeal:

1. The charge and specification were not proven by a preponderancy of evidence. Appellant asserts inter alia:
 - a. There was no probable cause to search Appellant's stateroom;
 - b. The confiscated pack's contents did not have the appearance of marijuana;
 - c. The chain of custody was insufficient;
2. The sanction of revocation is excessive.

OPINION

I

Appellant asserts that the record does not support the finding of proved to the charge and specification. I do not agree.

the record reflects that the Master of the M/V GOLDEN ENDEAVOR smelled incense in the crew berthing area, requested the assistance of two crewmembers and began searching staterooms in the vicinity of the odor. [TR 52-54]. Contrary to Appellant's contention, a vessel's Master is fully authorized to enter and search any area of his vessel, including crewmember staterooms, without probable cause or a search warrant. This is justified by the Master's concern and responsibility for the safety of the vessel and its crew. Appeal Decisions 2476 (BLAKE), affd sub nom Commandant v. Blake, NTSB Order No. EM-156 (1989); 2504 (GRACE); The STYRIA, 186 U.S. 1 (1901).

Additionally, it is noted that a ship's Master cannot violate the Fourth Amendment to the United States Constitution by conducting a warrantless search, since he conducts his search in his capacity as a private citizen, not as a Federal or state official. Appeal Decision 2115 (CHRISTEN), affd sub nom Commandant v. Christen, NTSB Order No. EM-7 (1978); BLAKE, supra.

The record further reflects that the Master confiscated a package of leafy vegetable material that later tested positive as marijuana. [TR 57, 72-74]. Absent evidence sufficient to rebut the accuracy or validity of that field test, the positive finding allows the inference to stand that the substance was marijuana. Appeal Decisions 2504 (GRACE); 2252 (BOYCE); 2384 (WILLIAMS). The fact that the material did not have the appearance of marijuana to one of the witnesses is irrelevant. There is no evidence that the material was tampered with subsequent to its confiscation and the field test is sufficient evidence that the material confiscated was marijuana.

The record fails to support Appellant's contention that the chain of custody maintained by the Master was defective. The Master put the confiscated marijuana in an envelope, subsequently putting it in his stateroom desk. Only the Chief Mate and Chief Engineer had pass keys for the Master's stateroom. [TR 88-90, 94]. He left the confiscated material in the locked room for approximately one hour [TR 89-90] and subsequently locked the marijuana in his safe [TR 94]. The marijuana was removed from the safe only upon return to Norfolk, Virginia where it was remanded to Customs Officials who receipted for the evidence.[TR 91].

There is no evidence of tampering. [TR 94, 95]. The

Administrative Law Judge found the evidence credible and persuasive regarding the issue of the chain of custody. I concur.

Based on the foregoing, I find the record fully supports the finding of proved to the charge and specification. Those issues raised inter alia by Appellant in his bases of appeal are without merit for the reasons aforementioned. Accordingly, the finding of the Administrative Law Judge will not be disturbed.

II

Appellant asserts that the sanction of revocation is excessive because the quantity of marijuana involved is small, Appellant testified that he does not use marijuana, and there is no evidence that an incidence of illegal possession will recur. I do not agree.

Title 46 C.F.R. §5.59 mandates revocation of merchant mariner licenses and documents by the Administrative Law Judge when a charge of misconduct for possession of a dangerous drug is found proved. BLAKE, supra; Appeal Decision 2303 (HODGEMAN). This regulation was promulgated by the Commandant pursuant to the secretarial delegation of the authority to revoke contained in 46 U.S.C. §7703. In developing that statute, Congress expressed its intent to remove individuals who possess dangerous drugs from service aboard U.S. Flag merchant vessels. House Report No. 338, 98 Cong., 1st session 177 (1983).

Notwithstanding the small quantity of marijuana in issue, there is no evidence that Appellant's possession was merely the result of experimentation. Absent such evidence, revocation is mandated pursuant to 46 C.F.R. §5.59. GRACE, supra; BLAKE, supra, Appeal Decision 2494 (PUGH);

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

ORDER

The decision and order of the Administrative Law Judge dated on 20 March 1990 at New Orleans, Louisiana is AFFIRMED.

/s/
MARTIN H. DANIELL
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 6th day of May, 1991.

***** END OF DECISION NO. 2525 *****